

A4R
8.L33
V21/5
Copy 2



South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

S. C. STATE LIBRARY

FEB 27 2004

STATE DOCUMENTS

Vol. 21

February 10, 2004

No. 05

CONTENTS

HOUSE WEEK IN REVIEW	02
HOUSE COMMITTEE ACTION	04
BILLS INTRODUCED IN THE HOUSE THIS WEEK	06

NOTE: Bill summaries included in this document are prepared by the staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

OFFICE OF RESEARCH

Room 213, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 734-3230

HOUSE WEEK IN REVIEW

The House of Representatives approved and enrolled for ratification **S.844**, a bill revising provisions for **ELECTRIC COOPERATIVES**. This legislation removes the current limitation that confines the service rights of electric cooperatives to rural areas. The current restriction prevents an electric cooperative from entering into service agreements in a town with a population over 2,500. Under the legislation, an electric cooperative is authorized to serve customers within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality. The legislation also protects the rights of investor-owned utilities to serve within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality.

The House amended, approved, and sent to the Senate **H.3594**, a bill providing for the **EXPANSION OF THE INMATE DNA SAMPLING PROGRAM TO INCLUDE ALL FELONS**. The legislation expands the state's inmate deoxyribonucleic acid (DNA) sampling program by requiring all inmates convicted or adjudicated delinquent of a felony to provide DNA samples for inclusion in the database maintained by the State Law Enforcement Division (SLED).

The House amended, approved, and sent to the Senate **H.3726**, a bill that revises provisions relating to **INTERFERENCE WITH A CHILD CUSTODY ORDER**. The bill establishes circumstances under which a law enforcement officer may recover a child whom he believes has been taken or is being withheld from his legal custodian. After being shown a court order awarding legal custody, an officer may seek a warrant to enter a dwelling, structure, or vehicle where it is believed that a child is being held in violation of the custody order to recover and return the child to the legal custodian. The officer need not seek a warrant for these actions if he has probable cause to believe that the child's health or safety is in danger. The bill provides a penalty for a person who knowingly gives false information to a law enforcement officer during the course of a dispute involving the custody of a child. The legislation applies only to situations involving a child that is less than sixteen years of age.

The House amended, approved, and sent to the Senate **H.3987**, a bill **DISALLOWING ANY EMPLOYMENT OF DIRECT CAREGIVERS IN NURSING HOMES AND OTHER ADULT CARE FACILITIES BEFORE REQUIRED CRIMINAL RECORD CHECKS**. The bill eliminates a provision allowing temporary employment of such direct caregivers pending the results of the required criminal record checks, requiring, instead that the record check requirements be fulfilled prior to employment. The bill provides that an employment agency may not furnish employees to a direct care entity without conducting a criminal record check on each employee. An employee who works in multiple direct care settings must have a criminal record check on file at the location of the employment agency or the home office of his employer. The bill also eliminates special record check provisions for residents of North Carolina or Georgia operating in border counties.

The House amended, approved, and sent to the Senate **H.4537**. This bill **TRANSFERS THE DIVISION OF AERONAUTICS FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF TRANSPORTATION**. The bill creates within the DOT, the State Aeronautics Commission (the Commission), charged to establish and oversee the public policy operations of the Division. The bill requires the Director of DOT to establish and oversee the administrative operations of the Division and provides that the Division's director must be appointed or dismissed by the Director of DOT with the advice and consent of the Commission. The Division is subject to the administrative procedures of the DOT. The bill provides for election of Commission members by legislative delegations of Congressional districts, and provides for members' terms of service. Under the provisions of the bill, the Commission would adopt its own rules and procedures. The bill provides that the activities of the Division must be funded through the State Aviation Fund and general appropriations to the Division. The bill adds as a function and purpose of DOT, the development of state public airports and an air transportation system. The bill also amends the Uniform Aircraft Financial Responsibility Act by providing that persons aggrieved by an act or order of the Division may have judicial review by appeal to the Administrative Law Judge Division, rather than to the circuit court, as is currently provided.

The House amended, approved, and sent to the Senate **H.3636**, a bill establishing **CONDITIONS FOR UTILIZING THE NAME OF A MUSICAL GROUP OR PERFORMER**. The bill provides that it is an unlawful trade practice to advertise a live musical performance or production in South Carolina through the use of a false, deceptive, or misleading affiliation, connection, or association between the performing person or group with another recording person or group. The provision does not apply if the: (1) performing person or at least one member of the performing group was a member of the recording person or group; (2) live musical performance or production is identified as a 'salute' or 'tribute' to, and is otherwise unaffiliated with, the recording person or group; (3) advertising does not relate to a live musical performance taking place in South Carolina; or (4) performance is expressly authorized in the advertising by the recording person or group.

The House refused to concur in Senate amendments to **S.560**, the "SOUTH CAROLINA LIFE SCIENCES ACT."

The House approved and sent to the Senate **H.4645**, a bill **REVISING THE PURPOSE FOR WHICH A CAPITAL IMPROVEMENT BOND AUTHORIZATION FOR USC-SPARTANBURG MAY BE USED**.

The House approved and sent to the Senate **H.4415**, a bill that **REMOVES TERM LIMITS FOR THE MEMBERS OF THE MIDLANDS TECHNICAL COLLEGE COMMISSION**.

The House approved and enrolled for ratification **S.731**. This bill revises provisions relating to the fishing season and other **FISHING REGULATIONS ON SLADE LAKE IN EDGEFIELD COUNTY**, so as to further specify these regulations and to also prohibit the use of nongame fishing devices and the possession of firearms, glass

containers, and alcohol and to prohibit littering and the improper operation or parking of motor vehicles.

HOUSE COMMITTEE ACTION

JUDICIARY

The full Judiciary Committee met on Tuesday, February 3, and reported out four bills.

The committee gave a report of favorable with amendment on **H.4354**, the "**SOUTH CAROLINA INFRASTRUCTURE PRIORITY INVESTMENT ACT OF 2003**". This bill revises provisions relating to comprehensive plans of local planning commissions so as to provide for coordination between adjacent and other relevant jurisdictions during the local planning process. Adjacent and other relevant jurisdictions and agencies include such entities as counties, municipalities, public service districts, school districts, public and private utilities, and transportation agencies. The legislation adds two requirements that must be included in a local comprehensive plan: (1) a priority investment element which establishes, through coordination with all adjacent and other relevant jurisdictions and agencies, suitable areas where development and community facilities are recommended to be directed and to where state and federal funding for all growth-related projects and community facilities are recommended to be targeted, using incentive market-based principles; and (2) a transportation element which considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. The new transportation element of the local comprehensive plan must be developed in coordination with the plan's land use element to ensure transportation efficiency for existing and planned development.

The committee gave a report of favorable with amendment on **H.3636**, a bill establishing **CONDITIONS FOR UTILIZING THE NAME OF A MUSICAL GROUP OR PERFORMER**. The bill provides that it is an unlawful trade practice to advertise a live musical performance or production in South Carolina through the use of a false, deceptive, or misleading affiliation, connection, or association between the performing person or group with another recording person or group. The provision does not apply if the: (1) performing person or at least one member of the performing group was a member of the recording person or group; (2) live musical performance or production is identified as a 'salute' or 'tribute' to, and is otherwise unaffiliated with, the recording person or group; (3) advertising does not relate to a live musical performance taking place in South Carolina; or (4) performance is expressly authorized in the advertising by the recording person or group.

The committee gave a favorable report on H.3400, a bill to **DISAVOW ANY CALLS FOR A FEDERAL CONSTITUTIONAL CONVENTION BY THE SOUTH CAROLINA GENERAL ASSEMBLY**. The legislation repeals Joint Resolution 775 of 1976, which called on the United States Congress to balance the federal budget through submitting an appropriate amendment to the states for ratification or in the alternative to call a constitutional convention for this purpose. The legislation disavows any other calls for a constitutional convention, including, but not limited to S.1024 of 1978, by any means expressed.

The committee gave a favorable report on H.4453, a bill **UPDATING THE LIFE EXPECTANCY TABLE FOR CIVIL LITIGATION** using the 2001 Commissioners Standard Ordinary Mortality Table.

LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee met on Tuesday, February 3, and gave a favorable report on S.844, a bill revising provisions for **ELECTRIC COOPERATIVES**. This legislation removes the current limitation that confines the service rights of electric cooperatives to rural areas. The current restriction prevents an electric cooperative from entering into service agreements in a town with a population over 2,500. Under the legislation, an electric cooperative is authorized to serve customers within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality. The legislation also protects the rights of investor-owned utilities to serve within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The Medical, Military, Public and Municipal Affairs Committee adjourned debate on S.104, which provides for **TATTOOING IN SOUTH CAROLINA**.

The Committee reported favorable on H.4397. The purpose of this bill is to correct a drafting error in the **ANESTHESIOLOGISTS' ASSISTANT PRACTICE ACT**. Under this act, "Sponsoring anesthesiologist" means the physician specialist in anesthesiology who signs the anesthesiologist's assistant's application for licensure. The act should specify that it is the "sponsoring physician," not just a "supervising physician" who agrees to be responsible for a written practice protocol that delineates the service that the anesthesiologist's assistant is authorized to provide. An anesthesiologist assistant is sponsored by one physician but may be supervised by more than one physician. The way the act currently reads requires every physician who supervises an anesthesiologist assistant to be responsible for the protocol. The proposed change clarifies that it is just the "sponsoring physician" who is responsible for the protocol.

The bill also adds the American Osteopathic Association as a recognized entity for approval of Anesthesiology programs. Currently, the Accreditation Committee on Graduate Medical Education is the only named entity.

The bill also allows a Board of Medical Examiners designee to review an anesthesiologist assistant applicant's qualifications for licensure. This change will allow Board members to designate specialists on the Anesthesiologist Assistants' Committee to review an applicant's qualifications.

The Committee reported favorable on H.4455. Currently, state law allows a pharmacy in S.C. to transfer prescription information to another pharmacy in the state for one refill of a medication. This bill **WOULD ALLOW THE TRANSFER OF ALL REMAINING REFILLS FOR A PRESCRIPTION BETWEEN ANY LICENSED PHARMACIES**, including pharmacies located in other states. The transferring pharmacist would be required to void any remaining refills and the receiving pharmacist would be authorized to dispense all remaining refills on the original prescription.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.4692 **COMMERCIAL FEED** Rep. Witherspoon

This bill makes numerous revisions to the South Carolina Commercial Feed Act, including but not limited to revisions which clarify the Act and bring its provisions into alignment with feed laws in other states.

H.4696 **AGRICULTURAL COMMODITY BOARDS** Rep. Witherspoon

This bill revises the qualifications of members of the agricultural commodity boards.

H.4697 **PURCHASES OF TREES OR FOREST PRODUCTS** Rep. Witherspoon

This bill provides that a person who purchases trees or forest products directly from a landowner from lands in South Carolina, and has received payment for the forest products shall, within forty-five days of the receipt, make payment in full to the landowner. The bill includes procedures for the landowner in the event that such payment is not received, and includes penalties which may be imposed against the purchaser for violation of the payment requirement.

H.4698 **FOREST LAW ENFORCEMENT OFFICERS** Rep. Witherspoon

This bill revises the violations for which law enforcement officers at the State Commission of Forestry may use their official summons form in making arrests. The bill also amends provisions regarding appointment and responsibilities of these officers.

H.4704 SEPTIC TANK ACCESS PIPES Rep. Sandifer

This bill provides that new septic tank installation (installed after June 30, 2004) must include an access pipe for monitoring and pumping the septic system. The bill provides that such a pipe must be installed on an existing septic tank system after June 30, 2004, when work is performed on the system that requires unearthing the tank. For failure to comply with these provisions, the bill provides for a civil fine imposed by DHEC.

EDUCATION AND PUBLIC WORKS

H.4691 HOMELESS PETS SPECIAL PLATES Rep. Witherspoon

This bill provides that the State Department of Agriculture, rather than the State Veterinarian, will designate the use of funds derived from the sale of homeless pets special license plates.

JUDICIARY

H.4674 NO LEGAL FORCE OR EFFECT FOR SAME SEX MARRIAGES

Rep. Coates

This bill provides that same sex marriages in any other jurisdiction have no legal force or effect in this state. The bill provides that it is against public policy to extend or recognize statutory benefits of a legal marriage to nonmarital relationships and to further provide that any public act, record, or judicial proceeding of this state that extends such benefits to nonmarital relationships has no legal force or effect in this state. The bill provides that benefits of a legal marriage extended to nonmarital relationships in another jurisdiction have no legal force or effect in this state.

H.4675 SENTENCES FOR LITTERING Rep. Harrison

This bill makes revisions to sentences imposed for littering.

H.4686 INCREASE IN MAXIMUM MONETARY PENALTY FOR TRANSFER OF CASE TO MAGISTRATES OR MUNICIPAL COURT Rep. G. M. Smith

This bill increases from five thousand to five thousand five hundred dollars the maximum monetary penalty for transferring a case from general sessions court to magistrates or municipal court.

H.4701 SOUTH CAROLINA BILL OF RIGHTS DAY Rep. Altman

This bill establishes December fifteenth of each year as "South Carolina Bill of Rights Day." Under the legislation, all governmental bodies are encouraged to observe the annual Bill of Rights Day in a manner that emphasizes the document's meaning and importance.

**H.4703 PROHIBITION ON OPERATING A MOTOR VEHICLE WHILE USING A
MOBILE OR CELLULAR PHONE** Rep. Neilson

This bill prohibits a person from operating a motor vehicle while using a mobile or cellular phone unless the phone is used in a "hands free" manner. A violator is guilty of a misdemeanor and, upon conviction, must be fined not more than fifty dollars or imprisoned for not more than ten days.

LABOR, COMMERCE AND INDUSTRY

**H.4662 REIMBURSEMENT OF UNEMPLOYMENT BENEFITS NOT REQUIRED
FOR INDIVIDUAL SEPARATED FROM PUBLIC EDUCATION
EMPLOYMENT FOR FAILURE TO MEET CERTIFICATION
REQUIREMENTS** Rep. Neilson

This bill provides that the State or any political subdivision or any instrumentality of the State or political subdivision which is an educational institution is not required to reimburse regular or extended unemployment benefits attributable to service in its employ if the Employment Security Commission determines that the individual has been separated because of certification requirements imposed by state or federal law and the individual was unable to meet those requirements because of mere inability of incapacity.

**H.4663 MAXIMUM LIMIT FOR THE DISABILITY RATING ESTABLISHED BY
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**
Rep. Leach

This bill limits the disability rating established by the South Carolina Workers' Compensation Commission to a maximum of one hundred fifty percent of the American Medical Association Guidelines for Impairment.

**H.4664 WORKERS' COMPENSATION ELIMINATED FOR INJURY/DEATH
CAUSED BY INTOXICATION OR USE OF CONTROLLED
SUBSTANCES** Rep. Leach

This bill provides that Workers' Compensation is not allowed for an injury or death proximately caused by intoxication by alcohol or being under the influence of marijuana or a controlled substance, except as may have been prescribed lawfully by a physician for the employee and taken in accordance with the prescription.

**H.4665 WORKERS' COMPENSATION ELIMINATED FOR INJURY/DEATH
CAUSED BY WILFUL MISCONDUCT OR NEGLIGENCE** Rep. Leach

This bill provides that Workers' Compensation is not allowed for an injury or death due to the employee's wilful misconduct, including intentionally self-inflicted injury, or growing out of his attempt to injury another, or for the wilful failure or refusal to use a safety appliance or perform a duty as required by written company policy and state statute.

**H.4666 WORKERS' COMPENSATION ELIMINATED FOR ILLEGAL ALIENS
WHO GAINED EMPLOYMENT THROUGH FRAUDULENT MEANS**
Rep. Leach

This bill provides that Workers' Compensation, either lost wages or medical, is not allowed for an injury or death, when the injury or death occurred to an individual who is an illegal alien, who gained employment through fraudulent means or methods, or both, including, but not limited, to falsification of application, invalid social security number, or falsified or invalid immigration papers.

**H.4667 NO PAYMENT OF LOST WAGE COMPENSATION WHILE EMPLOYEE
IS INCARCERATED** Rep. Leach

This bill provides that payment of lost wage compensation for an employee who was injured while on the job during all periods of time, after the initial injury, must not be paid while the employee is incarcerated.

**H.4668 PHYSICIAN-PATIENT CONFIDENTIALITY IN WORKERS'
COMPENSATION MATTERS** Rep. Leach

This bill provides that a physician, surgeon, or other health care provider may discuss such facts as a worker's compensation claimant's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with representatives of the insurance carrier, the employer, the employee, their attorneys, or the South Carolina Workers' Compensation Commission without violating physician-patient confidentiality.

H.4669 LOSS OF USE OF THE BACK UNDER WORKERS' COMPENSATION
Rep. Leach

This bill revises provisions relating to the amount of Workers' Compensation and period of disability for certain injuries, so as to eliminate the presumption of total disability in cases where there is fifty percent or more loss of use of the back.

**H.4670 CLAIMANT'S BURDEN OF PROOF UNDER WORKERS'
COMPENSATION** Rep. Leach

This bill provides that the burden of proof in a worker's compensation claim is on the injured employee. Causation in medically complex workers' compensation cases must be proven by expert witness opinion evidence.

**H.4671 ELIMINATING CONCURRENT JURISDICTION BETWEEN THE SOUTH
CAROLINA WORKERS' COMPENSATION ACT AND FEDERAL ACTS**

Rep. Leach

This bill provides that South Carolina Workers' Compensation Act provisions do not apply to employees covered by the Federal Employers' Liability Act, the Longshore and Harbor Workers' Compensation Act, or any of its extensions, or the Jones Act.

**H.4672 REQUIRED NOTICE OF AN ACCIDENT UNDER WORKERS'
COMPENSATION** Rep. Leach

This bill revises the time under Workers' Compensation provisions that notice is required be given to an employer by an employee after an accident so as to shorten the time from ninety to fourteen days.

H.4677 DEFINITION OF NEW MANUFACTURED HOME Rep. Cato

This bill revises definitions used in the licensure and regulation of persons who manufacture, sell, install, modify, or alter manufactured homes, so as to define "new manufactured home."

H.4688 GIFT CERTIFICATE REQUIREMENTS Rep. Davenport

This bill provides that a person may not issue or sell a gift certificate which provides that the certificate expires before the first anniversary of the date on which the certificate is issued or sold. Exceptions are provided. The bill provides that a condition relating to the use of a gift certificate must be stated clearly on the certificate if the condition provides that the certificate decreases in value over a period of time or that a fee is charged against the balance of the certificate after a certain period of time.

**H.4694 LODGING ESTABLISHMENTS REQUIRED TO COMPLY WITH
BUILDING CODE STANDARDS FOR FIRE SUPPRESSION** Rep. Leach

This bill requires lodging establishments to comply before July 1, 2007, with international building code standards for fire suppression.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.4676 CHIROPRACTORS Rep. Harrison

This bill conforms statutes regarding the licensure and regulation of chiropractors to the statutory organizational framework of professional and occupational boards under the administration of the Department of Labor, Licensing, and Regulation (LLR). The bill further provides for the licensure and regulation of chiropractors with revisions including but not limited to further specification of the scope of practice; requiring malpractice insurance; authorizing delegation of treatment under certain conditions; student preceptor training programs; out-of-state consultants; and licensure by endorsement. The bill also provides immunity from liability for communications written to any person acting on behalf of the Board of Chiropractic Examiners or LLR during the investigation, hearing, or adjudication of certain disciplinary matters.

H.4712 VOCATIONAL REHABILITATION COUNSELORS Rep. Quinn

This bill provides certain training and education requirements for a counselor at the State Department of Vocational Rehabilitation.

WAYS AND MEANS

H.4687 PARTICIPATION IN STATE HEALTH INSURANCE PLAN Rep. Cooper

This joint resolution provides that an entity that began participating in the State Health Insurance Plan before April 1, 2004 and which is adversely affected by the State Budget and Control Board's implementation of experience rating effective July 1, 2004, may discontinue participating in the Plan as provided in the bill.

H.4693 SALES TAX EXEMPTIONS Rep. Witherspoon

This bill extends to apiary products the sales tax exemption currently provided for farm, grove, vineyard, and garden products sold in the original state of production or preparation for sale, when sold by the producer or by members of the producer's immediate family.

H.4699 TAXPAYER CONTRIBUTIONS TO EDUCATION Rep. Duncan

This bill authorizes and provides for a taxpayer to make a contribution toward K-12 public education in South Carolina by designating five dollars for that purpose to be paid with his income tax return as provided in the bill. The bill provides that funds derived from such contributions must be transferred to the State Department of Education and used to increase the Base Student Cost pursuant to the Education Finance Act.

**H.4714 PREPAID LEGAL INSURANCE FOR
STATE EMPLOYEES** Rep. Huggins

This bill authorizes and provides for the Comptroller General, under certain conditions, to pay a premium for the prepaid legal insurance of a state employee through payroll deduction.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.net>) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

NOTE: THE LEGISLATIVE UPDATE IS AVAILABLE TO LEGISLATIVE TRACKING SUBSCRIBERS. YOU MAY REGISTER FOR THIS FREE SERVICE ON THE SOUTH CAROLINA GENERAL ASSEMBLY HOME PAGE BY CLICKING ON "ELECTRONIC TRACKING" (UNDER "LEGISLATIVE RESOURCES"), THEN CLICKING ON "ADD NEW SUBSCRIPTION RECORD" AND COMPLETING THAT FORM.